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# Republican Policy Committee

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## **Vincent Foster's Whitewater Files: *Unresolved Issues***

Hearings by the Special Committee to Investigate Whitewater Development Corporation and Related Matters begin Tuesday, July 18. The first line of inquiry will be the handling of the Whitewater-related files and records removed by senior White House officials from the office of Deputy White House Counsel Vincent W. Foster, Jr., possibly within hours after his death.

Vincent Foster was a life-long friend of the President, and a partner with the First Lady in the Rose Law Firm in Little Rock. He came to Washington with the Clintons to serve in the White House Counsel's office. At the same time, he continued to handle various personal legal matters for the Clintons, including matters related to Whitewater Development Corporation, the Arkansas real estate development firm in which the President and Mrs. Clinton held a one-half interest between 1978 and 1992, and which is now being examined by a court-appointed independent counsel.

### ***July 1993: Foster Dies; His Office Left Unsealed***

On July 20, 1993, Foster died under tragic circumstances. He was last seen leaving his White House office at 1:30 p.m. At about 5:45 p.m., his body was found in Ft. Marcy Park, a small national park in Washington's Virginia suburbs, dead of a single gunshot wound to the skull. There were no known witnesses.

Standard law enforcement practice in these circumstances would require Foster's office to be sealed immediately, to prevent the loss of any evidence that might be found there. This was not done.

Sometime after 10 p.m. in the evening of Foster's death, Bernard Nussbaum, Patsy L. Thomasson, and Margaret Williams entered his office, which was located in the West Wing. Nussbaum was White House Counsel; Thomasson was a special assistant to the President; and Williams was Mrs. Clinton's chief of staff.

In testimony given to Special Committee investigators, Nussbaum, Thomasson, and Williams disagree on the order in which they entered Foster's office, the length of time they spent there, and the order in which they left. They all deny removing anything. However, a Secret Service agent who was on duty that night has said in sworn testimony that Williams left the office with a box of papers.

Two days later, on July 22, Nussbaum conducted a further search of Foster's office. Park Police and FBI agents were present, but Nussbaum ordered them to wait in the hall. Inside the office, Nussbaum sorted the documents and items, based on his own determination of whether they related to official government business or to the Clintons' personal affairs, or were Foster's personal items. Nussbaum alone determined what the law enforcement authorities were allowed to see.

### ***December 1993: Clandestine Search Acknowledged***

In December 1993, the late-night search by Nussbaum, Thomasson, and Williams, the fact of which had been concealed for five months, was finally acknowledged. The *Washington Times*, relying on information from eyewitnesses, broke the story that the three senior officials had made the clandestine visit to Foster's office on the night of his death. ["Clinton Papers Lifted After Aide's Suicide," *Washington Times*, 12/20/93.]

The same day as the newspaper report, the White House acknowledged that the search had occurred and that documents concerning the Clintons' investment in Whitewater Development Corporation had been removed from Foster's office. A White House spokesman acknowledged that the papers were taken without having been shown to investigators, and said that they were given to David Kendall, the Clintons' private attorney.

Until that day, "Administration officials ha[d] insisted that everything relevant had been made known." ["White House Took Clinton Files After Top Aide Killed Himself," *New York Times*, 12/21/93.]

### ***August 1994: New Disclosures - Whitewater Files Went to Clinton Quarters***

Eight months after that - in August 1994 - the *New York Times* reported that Nussbaum did not give the Whitewater papers taken from Foster's office to the Clintons' personal lawyer, as officials had said for a year. Instead, Nussbaum gave the files to Margaret Williams. Williams, following instructions by telephone from Mrs. Clinton (who was in Little Rock at the time), took the files to the Clinton residence on the third floor of the White House. Five days later the papers were turned over to Kendall, the private lawyer.

As the *New York Times* stated:

The White House said today that it had given a misleading account for months of how senior officials had disposed of the files on President Clinton's Whitewater real estate investments that were found in the office of Vincent W. Foster, Jr., after his suicide a year ago. *It was the third time since December that officials*

*have acknowledged inaccurate or incomplete explanations of how they dealt with papers in Mr. Foster's office. ["New Misstatements Admitted in Handling of Foster's Files," New York Times, 8/3/94; emphasis added.]*

### ***July 1995: Some Whitewater Documents Released***

In recent days, the White House has released a file of approximately 73 pages, said to consist of the papers related to Whitewater Development Corporation that had been in Foster's office. A White House spokesman assured Congress and the public: "The contents of the file are intact and innocuous. There's no proof that anything was taken out of it." ["Probe Into Handling of Foster Files May Highlight Some Discrepancies," *Washington Post*, 7/10/95.]

According to one news account, most of the documents are fairly routine, though there is one that is not exactly "innocuous." It is a letter to Hillary Rodham Clinton from an accountant complaining that "the corporation has no set of books, and there were no work papers to back up" previous years' tax returns. ["Clinton Aides Vulnerable to GOP Attack Over Versions of Vincent Foster Case," *Wall Street Journal*, 7/10/95.]

As it turned out, the Whitewater file did not contain *all the* Whitewater documents from Foster's office. On almost the eve of the Special Committee's hearings, and only days after the file was described as "intact," *new* Whitewater documents also found in Foster's office came to light. These included a document that definitely cannot be called "innocuous": a handwritten memorandum by Foster, noting that it was not possible for the President and Mrs. Clinton to substantiate that they had lost money in their investment in Whitewater – something they claimed during the 1992 presidential campaign and repeated many times afterward. ["Foster Worried About Audit on Whitewater," *Washington Post*, 7/14/95.]

Now, White House officials "concede the staff was sloppy, but deny any attempt to cover up or obstruct justice." ["The Night Foster Died," *Time* magazine, 7/17/95.]

### **Unresolved Issues**

At least three main issues are expected to be addressed in this first phase of the Special Committee's hearings:

- ***What Whitewater documents were in Foster's office, who was responsible for removing the documents, and where are the documents now?***

The key questions, as outlined by Special Committee Chairman D'Amato in a recent floor speech, are:

Who searched Foster's office on the night of his death? What were they looking for? What happened to Mr. Foster's papers? Were any papers lost or destroyed? [Congressional Record, 5/17/95, S 6772.]

The Committee is likely to receive a great deal of conflicting testimony. To give merely one example, Nussbaum, Thomasson, and Williams all have denied taking anything from Foster's office the night of his death. Uniformed Secret Service agent Henry O'Neill says in sworn testimony that Williams was carrying a box of documents when the three left the office that night. Many similar issues of credibility will have to be resolved.

We now know that Foster's office did contain significant Whitewater documents. Nussbaum took enormous risks to himself and to the Office of the Presidency to keep these documents out of the hands of law enforcement authorities. Viewed against the possible consequences, the sacking of Foster's office seems a desperate act.

We now know that the papers in Foster's office did contain seriously damaging information: the accountant's statement that Whitewater had no books, and, more damaging, Foster's memorandum that the Clintons' claimed losses could not be substantiated. Was anything else there? Will other documents come to light? Were damaging documents lost or intentionally destroyed?

- ***Was it appropriate - and legal - for Foster to be working on Whitewater matters for the President and Mrs. Clinton in his White House office while serving as Deputy White House Counsel?***

As a member of the White House Counsel's staff, Foster drew a full-time government salary and was provided a government-funded office to advise the President on official matters. The President and First Lady, like other citizens, are expected to retain private counsel for private legal matters.

Published reports say that while Foster was employed full-time in the White House, he performed personal legal work for the Clintons, including the filing of three years of delinquent corporate tax returns for Whitewater, and the placement of the Clintons' assets into a blind trust — a task he had just completed at the time of his death.

Serious questions concern whether it was legal for Foster to do this personal legal work. One federal law that might apply is 18 USC § 641, which makes it a crime to convert to personal use any "thing of value" belonging to the United States. The courts have interpreted "thing of value" to include the value of subordinate government employees' time — as well as government property — when used to perform personal services for their superiors.

• ***Why did law enforcement officers fail to seal Foster's office?***

On the night of July 20, Nussbaum, Thomasson and Williams entered Foster's open, unsealed office. On the morning of July 21, Park Police investigators arriving at the White House to search the office were turned away by Nussbaum, citing "executive privilege." On July 22, Nussbaum made in his own search, while the Park Police and FBI waited outside the office door. It appears that the Whitewater documents were removed from the office during this time that Nussbaum, rather than law enforcement officials, controlled the investigation.

The Park Police, taking the lead in the death investigation, failed to secure Foster's office with their own personnel. Instead, according to her testimony before the Senate Banking Committee hearings last year - which were chaired by Senator Riegle (D-MI) - Park Police Sgt. Cheryl Braun called David Watkins, White House Director of Administration, and asked him to arrange for sealing the office. But Foster's office remained open until about 10:20 a.m. the next morning, when a Secret Service agent was posted at the door.

Though, it seems, the White House shares part of the responsibility for leaving the office open, it was fundamentally a law enforcement responsibility to seal the office immediately upon discovery of Foster's violent death under circumstances requiring a thorough investigation. The Park Police failure to act justifies questions as to whether they appropriately took the lead in the investigation.

The Park Police and the FBI both were present at the White House on July 22, when Nussbaum conducted his own search and unilaterally decided what law enforcement authorities would be allowed to see. Both the Park Police and FBI apparently obeyed his orders to wait in the hall. Critics have charged that the agents, especially from the FBI, should have asserted their authority as law enforcement officers to search the office themselves. Why did they not do so?

The handling of Vincent Foster's Whitewater documents, and the larger Whitewater-Madison affair, raise critical questions going to whether individuals who have been entrusted with high public office are worthy of that trust. In our democracy, such questions are basic.

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